

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

---

In the Matter of	)	
Implementation of Section 621(a)(1) of the Cable	)	
Communications Policy Act of 1984 as amended	)	MB Docket No. 05-311
by the Cable Television Consumer Protection and	)	
Competition Act of 1992	)	

---

**COMMENTS OF THE WISCONSIN ASSOCIATION OF PUBLIC, EDUCATION,  
AND GOVERNMENT ACCESS CHANNELS (WAPC)<sup>1</sup>**

These comments are filed by the Wisconsin Association of Public, Education, and Government Access Channels (“WAPC”) in support of the comments filed by the National Association of Telecommunications Officers and Advisors (“NATOA”) and the Alliance for Community Media (“ACM”). WAPC is a statewide non-profit 501c(6) organization representing 40 public, education, and government access stations in 38 cities. Like NATOA and ACM, WAPC believes that Congress was correct to empower local governments with the right to negotiate with video service providers for franchises that meet the “cable-related needs and interests” of local communities. Today, the Commission seeks comments addressing whether or not the local franchise process impedes two policy goals: competition and broadband deployment. While WAPC supports these goals, we believe they should not be maximized at the expense of three other historically important federal communications policy goals: Universal Service, Diversity of Speech, and Localism; these three goals are essential for sustaining a democracy in the digital communications age. All five of these policy goals, broadband deployment, competition, universal service, diversity of speech, and localism can be achieved by continuing the local video franchise process.

**Broadband deployment**

Does the local franchise process impede broadband deployment? According to Kagan Research LLC, 99% of television households are “passed by cable” and have access to both video programming and broadband information services.<sup>2</sup> The local franchise process has not hampered the cable industry.

---

<sup>1</sup> Commonly known as the Wisconsin Association of PEG Channels or WAPC.

<sup>2</sup> National Cable & Telecommunications Association website, *Statistics & Resources*, <http://www.ncta.com/Docs/pagecontent.cfm?pageID=86>, February 8, 2006.

## Competition

Does the local franchise process discourage competition? No, the local franchise process, as implemented by local governments in their role as franchise authorities, provides a workable structure that creates a level playing field for competitors. Competitors are free to offer the video program services and information products they choose. Through the franchise process, local governments simply ensure that all competitors serve the federal communication policy goals of Universal Service and Diversity of Speech in an equivalent manner and in a way that serves the needs of the community. Local governments have **always** welcomed competitive franchisees and support lively competition among digital broadband communication networks.

## Universal Service

Does the local franchise process discourage video service providers from deploying their networks to all households in a local governmental jurisdiction? No, in fact the local franchise process ensures that video franchisees serve the franchising authority's entire jurisdiction as required by Section 621(a)(4) of the Communications Act of 1934, as amended. The negotiated agreement between the parties includes rollout timetables and density limitations on universal service. The universal service requirement serves a legitimate governmental interest: stepping in to ensure marketplace forces do not exacerbate the "digital divide" between the information poor and the information rich in this country.

According to the Commission's *Notice of Proposed Rulemaking*, Verizon and SBC complain that the universal service requirement impedes rollout of their product. Should the Commission adopt the reasoning of these telephone companies, the deployment of broadband would be forever impeded in certain areas of town. For example, SBC plans to confine its rollout of "Project Lightspeed" to areas with certain "customer value" profiles.<sup>3</sup> WAPC believes that to give in to this demand is to risk a future in which broadband providers compete avidly for the most convenient and most profitable areas of a jurisdiction and allow bottom feeder monopoly providers to serve the "low value customers" without checks from either the marketplace or government. Large areas of the country would receive second-class service with a higher price tag. Regulatory language prohibiting redlining is insufficient to prevent cherry picking from occurring without a local universal franchise. Broadband providers will simply argue other factors entered into their business decision to not serve a particular area or they might steer wide of an economically disadvantaged area, and in the process neglect some parts of middle class residential neighborhoods. Areas of town would be distinguished not only by the cost of housing, but also by the caliber of broadband service obtainable. This is not the future WAPC wants for our country.

---

<sup>3</sup> *Notice of Proposed Rulemaking, In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Adopted November 3, 2005, p. 5.

## Diversity of Speech

WAPC asks, does the local video franchise process impede the use of broadband video networks for local speech? No, in fact the local franchise process is the best way to safeguard public, education, and government access channels, facilities, and financial support. PEG channels serve the communication needs of every local community in a unique way. Thanks to the local cable franchise process, local governments are able to secure channel space, facilities, and funding for these channels at a level and in a manner that is appropriate for each community. WAPC agrees with Commissioner Adelstein when he says,

It is critical to the future of our democracy itself that our citizens have access to as many forms of video content as possible so they can make up their own minds about the issues of the day and not remain subject to a tiny number of gatekeepers who can decide what deserves airing based on their own financial or ideological interests.<sup>4</sup>

Why are PEG channels and funding support important? When consumers select a particular cable or video service provider, they select an information gatekeeper. The gatekeeper chooses the twenty to over one hundred program services it will offer subscribers at various price points. Subscribers have no say beyond utilizing the “V-chip” to block program services they do not want. A handful of PEG channels are the only channels on a cable or video system that reflect the public will. PEG channels are the only program services not selected or removed at the gatekeeper’s discretion. Except for public television broadcast stations, PEG channels are the only channels with a non-profit mission. PEG channels are the only channels programming 24 hours per day seven days a week with local programming. PEG channels are the only channels that can be used by the public to speak to a broad audience. The importance of the continued viability of these channels cannot be overstated.

PEG channels are widespread. These channels have become very important conduits between local governments and their constituents, between educational institutions and their students, parents, and home learners, between non-profit organizations and residents and between people and the community in which they live. Exhibit A, attached, illustrates the importance these channels have in their communities from the station managers themselves, who work with the public every day.

During emergencies local governments utilize PEG channels as part of Emergency Alert System procedures. Access channels are the only media officials can use to reach large portions of the population without delay and without any mediation. WAPC’s president, Jon Urben, Cable Media Services Director at Oshkosh Community Access Television explains:

---

<sup>4</sup> Statement of Commissioner Jonathan S. Adelstein, *Notice of Proposed Rulemaking, In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Adopted November 3, 2005, p. 24.

Oshkosh has had to contend with several emergency situations in the last several years including a railroad car chemical spill in 2000 and an incredible windstorm in 2003. In both situations a good portion of the community was crippled by these emergencies and our government channel played a major role in communicating emergency updates, health advisories and other important public information.<sup>5</sup>

Public access channels are particularly precious to advocates of the First Amendment, as these channels constitute a public forum: the “town square of the digital age.” Through public access channels, the public at large has an opportunity to use the gatekeeper’s system, which uses public rights-of-way, to speak locally to his or her community about issues relevant to the community. Public access channels are central to what the Supreme Court once referred to as the “uninhibited marketplace of ideas.” Public access channels are the only way citizens can reach a large number of people at one time with an idea. For public access channels to remain viable, the federal government must continue to require video service providers and cable operators to support them with facilities and/or capital assistance, should local elected officials decide it is important to do so in their communities.

## **Localism**

Negotiating video service franchise agreements on the local level makes sense. Local governments understand the video and data communication needs of their communities and thus are best positioned to negotiate for cable-related services such as PEG channels and support, I-Nets, and Emergency Alert Systems. Local governments are familiar with the terrain of their jurisdictions, and thus can negotiate reasonable deployment schedules and density requirements to ensure all residents receive broadband services in a timely manner.

Enforcing video franchise agreements on the local level also makes sense. Local governments are able to take an active and effective oversight role unlike state or federal authorities. Local governments inherently care about the safe utilization of rights-of-way, consumer rights, and speech opportunities on a local level. Local governments are best positioned to enforce deployment schedules agreed upon in negotiations.

The continued viability of PEG channels and facilities rests on the ability of local franchising authorities to negotiate appropriate channel space and capital support.

A key advantage of local franchises is that the PEG channels carried on the system naturally serve the locality’s needs and interests. Based on community needs and interests identified through needs assessments and other tools, local governments negotiate for an appropriate number of PEG channels and by mutual agreement, the

---

<sup>5</sup> E-mail from Jon Urben, Cable Media Services Director, Oshkosh Community Access Television to Mary Cardona, Executive Director, WAPC, February 8, 2006.

number is set. Local elected officials, who are well acquainted with their communities and answerable to their community through the electoral process, choose the managers of PEG channels. Should video service providers be allowed to gerrymander (to borrow a political term) their service areas, the FCC or Congress would need to ensure all consumers can receive the access channels relevant to their community.

Current federal law requires cable operators to financially support PEG facility and capital equipment needs. This support is generated through a collection of a dedicated fee (in addition to the franchise fee on gross revenues) from cable television subscribers within a particular jurisdiction. While some franchising authorities opt to fund their PEG stations using all or part of the franchise fee, many others rely on a combination of this dedicated PEG fee and franchise fees to support their channels. Some examples. In Oshkosh, Wisconsin, approximately one-third of the franchise fee or \$220,000 is dedicated to PEG facilities and an additional \$390,000 is raised yearly from a \$0.60/subscriber/month fee. In New London, Wisconsin, a community of 7,000 people, virtually the entire 5% franchise fee collected on gross revenues, \$60,000, is used for the PEG facility and there is no dedicated per month subscriber fee. In River Falls, Wisconsin, a small community that is home to both UW-River Falls and the Chippewa Valley Technical College, PEG facilities are supported with the entire franchise fee, a \$1.32/subscriber/month fee plus additional money from the city's general fund.

With local governments struggling to finance the increasing costs of basic services with decreasing revenue from the state and capped local property taxes, the fate of PEG channels and facilities depends precariously upon the discretionary 5% franchise fee and even more upon the continuation of the dedicated capital support fee.

## **Conclusion**

Local governments are best suited to negotiate franchise agreements in the community interest and to provide public oversight of video service providers. Local franchising authorities have a strong desire to see competitive broadband video, voice and data service providers in their communities, but not at the price of sacrificing the historic communication policy values of Universal Service, Localism, and Diversity of Speech. While speed of rollout and competition are laudable policy goals, the local franchise system already supports these goals.

The federal government has a strong interest and obligation to ensure that PEG access channels remain viable and healthy public forums. Freedom of Speech, guaranteed in the First Amendment, is a hollow right if the public has no reasonable means to access broadband video systems – where the public primarily gets its news and entertainment. The negotiated local video franchise process is the best way to protect PEG access channels, facilities, and funding. Universal broadband video, voice, and data service must be valued to avoid generating a greater “digital divide” in this country. The local video franchise requiring service to all residences is the only way to ensure all citizens have equal access to these broadband services.

The local level of government is best suited to achieve all five goals: Competition, Broadband deployment, Localism, Universal Service, and Diversity of Speech. Therefore, WAPC urges the Commission to support the current local video franchise system as provided for in federal law.

Additional comments from four members of WAPC illustrating the importance of access channels and facilities are attached in Exhibit A.

Respectfully submitted.

Wisconsin Association of Public, Education,  
and Government Access Channels (WAPC)

By: Mary Bennin Cardona  
Executive Director  
4209 Bagley Parkway  
Madison, WI 53705

cc: John Norton, FCC, [John.Norton@fcc.gov](mailto:John.Norton@fcc.gov)  
Andrew Long, FCC, [Andrew.Long@fcc.gov](mailto:Andrew.Long@fcc.gov)  
Alliance for Community Media, [getup@alliancecm.org](mailto:getup@alliancecm.org)  
NATOA, [info@natoa.org](mailto:info@natoa.org)  
City of Eau Claire, [cityhall@ci.eau-claire.wi.us](mailto:cityhall@ci.eau-claire.wi.us)  
City of Madison, [mayor@cityofmadison.com](mailto:mayor@cityofmadison.com)  
City of Marshfield, [mayor@ci.marshfield.wi.us](mailto:mayor@ci.marshfield.wi.us)  
City of New London, [mayor@newlondonwi.org](mailto:mayor@newlondonwi.org)  
City of Oshkosh, [rwoollangk@ci.oshkosh.wi.us](mailto:rwoollangk@ci.oshkosh.wi.us)  
City of River Falls, [bvanosdale@rfcity.org](mailto:bvanosdale@rfcity.org)

WAPC member stations:

Baraboo Access TV  
Beloit Access Television  
Deerfield Community Access TV  
Dodgeville Community Access TV  
Eau Claire Community Television  
FACT TV, City of Fitchburg  
JATV 12, City of Janesville  
Kenosha Community Television  
Lake Mills Community Access TV  
WYOU Public Access, Madison  
Madison City Channel  
Madison Metropolitan School District  
Marshfield Public Access Channel 2  
City of Mauston – Channel 6

WMCF McFarland Cable 12  
UW Fox Valley University Studios  
Falls Cable Access Corporation, Menomonee Falls  
Merrill Area Public Schools  
Monona School/Community TV  
New London Cable 3  
Oshkosh Community Access TV  
Prescott Public Access  
Plymouth Community TV  
Cable Access Racine  
Rice Lake Public Access  
City of Ripon access television  
River Falls Community Television  
WSCS TV 8 Sheboygan  
CA3 Stevens Point Public Access  
WSTO Channel 12, Stoughton  
Sturgeon Bay Public Access  
Sun Prairie Cable Access  
VHAT-12, Verona  
Waterloo Community Access TV  
Wausau Public Access Channel  
West Allis Community Media Center  
West Bend Community Cable  
Trempealeau County Community TV  
Station 13 Whitewater Community TV  
River City Community Access, Wisconsin Rapids

## **EXHIBIT A**

The following comments from four WAPC member stations illustrate the importance of public, education, and government access channels, local franchising, and continued funding.

Comments of:

**Jon Urben**  
**Cable Media Services Director**  
**Oshkosh Community Access Television**  
**215 Church Avenue**  
**Oshkosh, WI 54901**

PEG access in Oshkosh has been a positive force in our community. Through our government access channel we have been able to bring about a more informed citizenry through programs that educate and inform citizens on municipal services, issues and challenges. The government channel has been especially useful during the last several years, as all local government has been challenged by state budget shortfalls. Now more than ever citizens are interested in how local governments are using tax dollars and we are the sole provider for that in-depth, un-edited perspective into city, school and county budgets with our meeting coverage. In addition, our city has had to contend with several emergency situations in the last several years including a railroad car chemical spill in 2000 and an incredible windstorm in 2003. In both situations a good portion of the community was crippled by these emergencies and our government channel played a major role in communicating emergency updates, health advisories and other important public information. Our public access channel provides citizens and non-profit organizations the unique opportunity to have their voice in the community, and to share these diverse viewpoints and perspectives with their neighbors. Since 1987 both channels have produced thousands of television programs that provide our citizens with a wide variety of programs that educate, entertain, and enrich our community.

Viewer surveys over the years have consistently proved that our PEG channels are both watched and appreciated by our viewers. The most recent random viewer survey (using statistically valid survey tools and sciences) conducted by the University of Wisconsin-Oshkosh in August 2005 noted that our viewers represented a good cross-section of our community based on income/education/age; watched our channels regularly and were satisfied with our programming-- especially the live government meetings and bulletin board information. Based on the respondents the survey also indicated that our government channel attracted approximately 19,979 viewers age 20+ on a weekly basis as compared to the public access channel with 13,620 viewers per week.

Oshkosh's franchise renewal with Time Warner Cable in 2001 for a 15-year contract provided our community with the funding to support and enhance our PEG channels. This financial support is the backbone of our very existence and provides the



necessary funding to staff, maintain and grow our operation. And while we have had success in various fundraising and revenue projects, we are still dependent upon our annual franchise fee to cover the bulk of our operational costs. As for our costs, we pride ourselves in providing a very lean operation -- three full-time and two part-time staff operate two access channels 24 hours a day, seven days a week. From a cost/benefit analysis I believe we provide an excellent value to our community.

But to the issue of whether the current franchise process impedes competition, I believe in Oshkosh our franchise agreement does not thwart outside competition. I am confident I can speak for our community when I say we would welcome with open arms any telecom provider interested in serving our community -- as long as they provide the same support for our PEG access as our current provider. And to those that say we aren't actively pursuing other telecom providers or involving them in this process, our local SBC provider is across the street from City Hall.

I am confident that the success of our operation through our programs and services has benefited not only our viewers and citizens but also Time Warner Cable. There is no question in my mind that a strong and vibrant PEG access operation such as ours provides the hosting cable company with a competitive edge by offering local access channels and programming not found on satellite providers. A common comment we receive from viewers is "if it were not for what you offer on PEG channels, I would switch to satellite."

Comments of:

**Joel Desprez**  
**Station Manager**  
**Eau Claire Community Television**  
**800 Wisconsin Street**  
**Eau Claire, WI 54703:**

Our Government Channel 12 is C-Span on the local level, providing hours of meeting coverage and local civic affairs programming, including hundreds of hours of local, state and federal election debates and forums that are not available anywhere else. On Access Channel 11 we help over 100 non-profits, from churches, to homeless shelters, to food pantries to issue-oriented organizations, reach out to their neighbors. All this is possible because of the support of local government and local cable providers as codified in local franchise agreements.

One of our volunteer producers, a retired general practitioner, Dr. Lou Frase, produces a health and fitness information program. He's not a famous doctor, but he delivered many of the children in our little town and held the hands of as many dying grandmothers. People listen to his advice. Here is an excerpt of a letter he received, "When I saw my doctor last May, my fasting blood sugar was... 376! Since watching your program and heeding your advice... [It] ranges from 89 to 120. I have totally

changed my eating habits... Thank you for your wisdom and encouragement." Local Community Television makes a big difference... in many little ways.

Comments of:

**Marcia Standiford**  
**Cable and Video Manager**  
**Madison Metropolitan School District**  
**545 W. Dayton Street**  
**Madison, WI 53703**

As school district budgets suffer significant reductions, reliance on our cable channel to communicate with the public has increased tremendously. Our educational access channel reaches the greatest number of taxpayers for the least amount of money as compared to other communication vehicles we employ. Cable subscribers are provided a window to school board processes, school administration and day-to-day school life. Without this resource the gap between school and community would widen, furthering endangering the future of our public schools.

Comments of:

**Dan Kummer**  
**Station Manager**  
**Marshfield Public Access Channel 2**  
**630 South Central Avenue**  
**Marshfield, WI 54449**

Our local Access Channel strives to include the underserved and underrepresented segments of our community. We have people and organizations using our facility to produce content that is meaningful and reflective of their experience within our community. Our newspapers and radio stations have become more and more regional in their reporting but PEG Access has preserved localism which has become key to protecting free speech in our community. Government meetings are heavily viewed in our city. Gavel to gavel coverage allows our local residents to see the political debate first hand, "deciding for themselves" on issues that directly affect their everyday lives. Public Access involves many volunteers to produce programs, operate cameras and perform many other duties that contribute to building a sense of community.